

FOR THE RELIEF OF EUGENE MAKUCH

MAY 7, 2002.—Referred to the Private Calendar and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 487]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 487) for the relief of Eugene Makuch, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
Purpose and Summary	1
Background and Need for the Legislation	1
Hearings	2
Committee Consideration	2
Committee Oversight Findings	2
Performance Goals and Objectives	2
New Budget Authority and Tax Expenditures	3
Congressional Budget Office Cost Estimate	3
Constitutional Authority Statement	3
Agency Views	4
Markup Transcript	6

PURPOSE AND SUMMARY

H.R. 487 would provide \$1,000,000 to Eugene Makuch for his service as foreign counterintelligence agent.

BACKGROUND AND NEED FOR THE LEGISLATION

Mr. Makuch and his wife were double agents against the KGB and the Soviet Union during the height of the Cold War.

Mr. Makuch's wife was born in a refugee camp in post-war Germany. Her father was held in a Nazi concentration camp; her uncle and grandfather both were killed by Communists; and her mother had to flee from the Ukraine in 1944. These events led Mrs.

Makuch to offer her services to the FBI against anti-American, pro-Communist New Left movements in 1971 at the age of 18. She was successful in infiltrating the KGB and made several visits to the Soviet Union to meet with KGB officials.

Mr. Makuch, in concert with his wife, also assisted the bureau. During that time, his health steadily deteriorated while he accompanied his wife to the Soviet Union. Ultimately, he suffered through two kidney transplants and a brain aneurysm that left him in a coma for several weeks.

Mr. Makuch and his wife were the source of information regarding secret funding channels of the Soviet Union and communist groups in the United States. The information gathered by them steered U.S. foreign policy and assisted the FBI in thwarting planned espionage activity by the Soviet Union. The Makuchs identified the primary Soviet front group in the U.S. That identification resulted in the conviction of the head of that organization for illegal transportation of Soviet funds from Moscow to the United States.

In 1992, Mr. Makuch's wife was awarded the Louis E. Peters Memorial Award, the highest civilian FBI award for her service to the United States. Although the Makuchs received some financial assistance over the 21 years they worked with the FBI, they did not receive any disability, Social Security, health care or pension benefits as promised by some of the individuals they worked with. This bill would compensate Mr. Makuch for the lack of those benefits .

The Department of Justice has no opposition to the bill.

HEARINGS

No hearings were held on H.R. 487.

COMMITTEE CONSIDERATION

On November 1, 2001, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 487, by voice vote, a quorum being present. On April 24, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 487 without amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 487 authorizes funding from the General Treasury in the amount of \$1,000,000 to be paid to the claimant.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 487, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 29, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 487, a bill for the relief of Eugene Makuch.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 487—A bill for the relief of Eugene Makuch.

H.R. 487 would direct the Secretary of the Treasury to pay \$1 million to Eugene Makuch of East Amherst, New York, as compensation for service in assisting the Federal Bureau of Investigation during the Cold War as a foreign counterintelligence agent. Because the bill would increase direct spending, pay-as-you-go procedures would apply.

The CBO staff contact for this estimate is Matthew Pickford, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8 of the Constitution.

AGENCY VIEWS



U.S. Department of Justice
Office of Legislative Affairs

Washington, D.C. 20530

September 5, 2001

The Honorable George W. Gekas
Chairman
Subcommittee on Immigration
and Claims
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

RECEIVED
SEP 06 2001
Immigration and Claims

Dear Mr. Chairman:

This letter responds to your letter to the Attorney General requesting views on H.R. 486 and H.R. 487, private relief bills for Eugene and Barbara Makuch pending before your Subcommittee. The Department of Justice does not oppose either bill.

For over 20 years Barbara Makuch provided significant assistance to the Federal Bureau of Investigation. With her husband, she provided critical information that allowed the FBI to offset espionage activities planned by the Soviet Union against the United States and our allies. Without doubt, their long term assistance and service demonstrated an admirable commitment to safeguarding the security of our Nation.

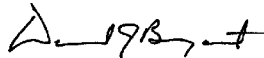
It was for this service and sacrifice that the FBI honored Mrs. Makuch in 1992 with the Louis E. Peters Memorial Service Award. In addition, over the years the FBI has provided funds to the Makuch's for their services and expenses and when their service was complete, the FBI made a significant "one-time" payment to help them during their transition phase.

We note that if either or both of the Makuches has a contract with an agent or attorney that entitles the agent or attorney to a fee greater than 10 percent of the award amount, an attempt by Congress to deprive such an agent or attorney of the full fee might constitute a "taking" of private property for which compensation would be due under the Fifth Amendment. See *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224 (1986) (contractual rights may be property that the government cannot take without "just compensation"). "The inquiry into

whether a taking has occurred is essentially an 'ad hoc, factual inquiry.'" *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005 (1984). Because we do not know whether such a contract even exists, we cannot determine whether section 3 of both bills would effect a compensable taking. Nonetheless, if these sections do result in a taking, the Makuches' agent or attorney would be able to pursue a remedy through the Tucker Act, 28 U.S.C. Section 491. The courts presume that a Tucker Act remedy is available unless Congress specifically forbids this method of recourse. See *Ruckelshaus*, 467 U.S. at 1018-19. Because the bill does not mention the Tucker Act, we would construe this remedy to remain available.

Thank you for this opportunity to present the Department's views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management has advised us that from their perspective of the Administration's program, there is no objection to the submission of this letter.

Sincerely,



Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Sheila Jackson Lee
Ranking Minority Member

The Honorable Thomas Reynolds

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, APRIL 24, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:09 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. [Presiding.] The Committee will be in order.

[Intervening business.]

Chairman SENSENBRENNER. Okay. The next item on the agenda is the adoption of H.R. 486 for the relief of Barbara Makuch, H.R. 487 for the relief of Eugene Makuch, H. Res. 103 referring the bill H.R. 1258 to the chief judge of the U.S. Court of Federal Claims for a report thereon. Without objection, the bills will be considered en bloc.

[The bill, H.R. 487, follows:]

107TH CONGRESS
1ST SESSION

H. R. 487

For the relief of Eugene Makuch.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2001

Mr. REYNOLDS introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

For the relief of Eugene Makuch.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PAYMENT.**

4 In consideration of the fact that Eugene Makuch—

5 (1) served as a foreign counterintelligence agent
6 and dedicated his life to assist the Federal Bureau
7 of Investigation in its efforts at the height of the
8 Cold War to combat communism, the Komitet
9 Gosudarstvennoy Bezopasnosti (KGB), and the So-
10 viet Union, and

11 (2) has not received employment assistance or
12 health, social security, or pension benefits, despite

1 assurances that he would receive such benefits upon
2 his retirement,
3 the Secretary of the Treasury shall pay, out of funds not
4 otherwise appropriated, the sum of \$1,000,000 to Eugene
5 Makuch of East Amherst, New York, in compensation for
6 the lifetime aggregate value of benefits earned but not re-
7 ceived by Eugene Makuch.

8 **SEC. 2. SATISFACTION OF CLAIM.**

9 The sum paid under section 1 shall be in full satisfac-
10 tion of any claims that Eugene Makuch may have against
11 the United States arising out of his service for the Federal
12 Bureau of Investigation.

13 **SEC. 3. LIMITATION ON ATTORNEY FEES.**

14 Not more than 10 percent of the sum paid under sec-
15 tion 1 shall be paid to or received by any agent or attorney
16 for services rendered in connection with the recovery of
17 such sum. Any person who violates this section shall be
18 fined under title 18, United States Code.

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Pennsylvania for a motion.

Mr. GEKAS. Mr. Chairman, the Subcommittee on Immigration and Claims reports favorably the bills H.R. 486, H.R. 487, and H. Res. 103 and moves their favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, they will be considered as read and open for amendment at any point. Without objection, statements can be placed in the record at this point.

Are there any amendments to either of the bills? If not, the Chair notes the presence of a reporting quorum. The question is on——

Ms. JACKSON LEE. Sorry, Mr. Chairman. Could you repeat the bills that you—are you doing these en bloc?

Chairman SENSENBRENNER. H.R. 486, H.R. 487, and H. Res. 103 en bloc.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Texas.

Ms. JACKSON LEE. Let me just add my support and I will offer a statement in the record for those three bills. Thank you.

[The prepared statement of Ms. Jackson Lee follows:]

F. JAMES SENSIBANDER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
GEORGE H. GERALD, Pennsylvania
HOWARD COLE, North Carolina
JAMES B. SMITH, Texas
TON GALLER, California
GOODLATT, Virginia
RYAN, Tennessee
JOE CHARBY, Ohio
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
LINDSEY O. GRAHAM, South Carolina
SPENCER SACABUS, Alabama
JOHN H. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLEY, Florida
DANIEL L. ISSA, California
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
MIKE PENCE, Indiana

ONE HUNDRED SEVENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3961

<http://www.house.gov/judiciary>

JOHN CONYERS, JR., Michigan
RANKING MEMBER

BARNEY FRANK, Massachusetts
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. ROBERTS, SCOTLAND
MELVIN L. WATT, North Carolina
ZOE LOFTHORN, California
SHEILA JACKSON LEE, Texas
KAYNE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WOLTER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY C. WYNER, New York
ADAM B. SCHIFF, California

STATEMENT OF

CONGRESSWOMAN SHEILA JACKSON LEE

H.R. 486 - For the relief of Barbara Makuch and H.R. 487 - For the relief of Eugene Makuch

H.R. 486 and H.R. 487 would provide \$1,000,000 each to the

Makuchs for their service as foreign counterintelligence agents.

Mr. and Mrs. Makuch were double agents against the KGB and the

Soviet Union during the height of the Cold War.

Mrs. Makuch was born in a refugee camp in post-war Germany.

Her father was held in a Nazi concentration camp; her uncle and grandfather both were killed by Communists; and her mother had

to flee from the Ukraine in 1944. These events led Mrs. Makuch to

offer her services to the FBI against anti-American, pro-Communist

New Left movements in 1971 at the age of 18.

Mr. and Mrs. Makuch were the source of information regarding secret funding channels of the Soviet Union and communist groups in the U.S. The information gathered by them steered U.S. foreign policy and assisted the FBI in thwarting planned espionage activity by the Soviet Union. The Makuchs identified the primary Soviet front group in the U.S. That identification resulted in the conviction of the head of that organization for illegal transportation of Soviet funds from Moscow to the U.S.

In 1992, Mrs. Makuch was awarded the Louis E. Peters Memorial Award, the highest civilian FBI award for her service to the United States. Although the Makuchs received some financial assistance over the 21 years they worked with the FBI, they did not receive any disability, social security, health care or pension benefits as promised by some of the individuals they worked with. These two bills would compensate for the lack of those benefits.

Chairman SENSENBRENNER. The Chair notes the presence of a reporting quorum. The question is on reporting the three bills favorably. Those in favor will signify by saying aye? Those opposed, no?

The ayes appear to have it. The ayes have it, and the bills are favorably reported. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by House rules, in which to submit additional supplemental, dissenting, or minority views.

